

## **5 Property Negotiation and Acquisition**

### **5.1 The Acquisition Function**

### **5.2 General**

The acquisition function is managed by two separate Right of Way Acquisition Managers located at the General Office. The State is separated into seven (7) District Offices statewide. One Manager is charged with all acquisition related activities in three (3) Districts, inclusive of the greater Atlanta metropolitan area; the second Manager is charged with all acquisition activities in the remaining four (4) District Offices.

### **5.3 Purpose**

The purpose of the acquisition function is to ensure that owners of real property to be acquired are treated fairly, consistently and equitably; and to ensure that displaced persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public. To ensure timely and orderly acquisition of property rights in a manner that is efficient and cost effective and in accordance with [49 CFR, Part 24](#).

### **5.4 Policy**

It is the policy of the Department of Transportation to acquire all property rights by negotiated settlement, when possible. Every reasonable effort should be made to negotiate amicably for the required property rights before condemnation proceedings are initiated.

### **5.5 Responsibilities of the Pre-Acquisition Agent**

The Pre-Acquisition Agent is responsible for making sure all pre-acquisition related functions are properly conducted in an orderly and timely manner. The Pre-Acquisition Agent is responsible for all acquisition activities leading up to the release of appraisal reports for negotiations.

### **5.6 Responsibilities of the Acquisition Manager**

The Acquisition Manager is responsible for project related assignments and ensuring that all negotiations and acquisition activities are properly conducted in an orderly and timely manner. The Acquisition Manager is responsible for the certification of highway projects and ensuring that the project is acquired in compliance with both federal and state laws.

### **5.7 Responsibilities of the Negotiator**

The responsibility of the negotiator is to acquire the property rights necessary for a State Transportation System. The negotiator should be familiar with the Uniform Relocation

Assistance and Real Property Acquisition procedures for Federal and federally assisted programs ([49 CFR Part 24](#)). The negotiator is responsible for representing the Department in personal contacts with owners and occupants and for making every reasonable effort to negotiate amicably a settlement.

These responsibilities include, but are not limited to the following; the Negotiator:

- a. Should be the most knowledgeable person concerning the combined aspects of the parcel assigned to him. He should fully understand scope of the project and the specific design details of the subject parcel, the reasoning, and conclusion of the appraisers and review appraiser, the parcel's title composition researched by the attorney, the relocation determinations, and property management procedures. He should be able to explain clearly these various components to property owners so that they fully understand the overall aspect of the pending acquisition.
- b. Should be able to speak to the property owner as a fully informed and authoritative representative of the Department of Transportation and contain the knowledge and skill to explain all aspects of the Department's offer.
- c. Should be fully acquainted with the proposed construction details and their effect on the remaining property and surrounding neighborhood. This includes the knowledge and understanding of right of way plans, construction plans, cross sections, and driveway profiles.
- d. Should be fully knowledgeable of and consistently apply policies and procedures of the Department of Transportation relating to Right of Way Acquisition.
- e. Should plan his work so that it can be properly completed within the scheduled period established for the project.
- f. Should always be prepared to answer pertinent questions asked by a property owner and to maintain written legible reports, records, and memorandums necessary to document his actions, answers and comments.
- g. The negotiator should always present a neat, clean, and business like appearance and business should always be conducted in a courteous, considerate manner.
- h. The negotiator can do much to establish common understanding by explaining that it is a part of his duty to be concerned at all times with the protection of the property owner and his rights just as much as it is his duty to protect the interests of the public at large.
- i. If a common understanding is to be reached, the negotiator should be a good listener, both asking questions and patiently answering any questions or concerns that the owner may raise.

- j. Undue haste in attempting to bring about a settlement, superior or patronizing attitudes, unnecessarily protracted interviews, or an authoritative attitude towards the owners should be avoided and is prohibited.

## **5.8 Project Management and Pre-Acquisition Coordination**

### **A. Assignments**

The Acquisition Manager receives the project assignment from the General Office Acquisition Unit. The following procedures represent an outline of the major pre-negotiation activities.

### **B. Initial Steps**

1. Prepare detailed cost estimate. Once cost estimate is completed, make written request to have a reviewer assigned using "Request for Reviewer" form listed in the Appraisal folder.
2. Input parcel numbers in TPro. The General Office will enter attorney and acquisition managers' name. Acquisition manager is responsible for entering Relocation Officer and Review Appraiser's name.
3. Only true parcel numbers are entered into TPro, such as all parcels identified on the Right of Way plans, including acquired uneconomic remnants or Relocation remainders (R parcels), wetland mitigation (W parcels), wetland buffers (WB) and wetland mitigation credits (WC).
4. Partial property interest such as a tenant's interest in parcel, a sign ownership, trade fixtures, etc. are not to be entered as a separate parcel; however a note should be made to parcel comments.
5. The Acquisition Manager is responsible for the initial set up of the displacee records for each project. This is accomplished by going to the initial Maintain ROW Relocation Status screen, highlight the parcel involved, and then click "add" to create a parcel/displacee record. This is later when the displacee chooses the moving method. Note: the Relocation Specialist assigned to each project is entered on the "Edit Project ROW Information" screen.
6. Request Copy of Preliminary Field Plan Review Report from the Design Office
7. Request copy of Conceptual Stage Study from the Relocation Office, if relocation is involved on project.

8. Request copy of Environmental Impact Statement, if applicable, from Environmental Office or depending on the project, the District Preconstruction Office.
9. Create Project General File, Title Report folder, Sign folder and Right of Way Option folder.
10. Meet and discuss the project with designer to become familiar with concept and purpose and request a set of the latest construction plans.
11. Request from General Office Right of Way Plan Unit a set of the right of way plans.
12. Determine who will be responsible for revisions of the right of way plans (Project Manager).
13. Conduct field review project with set of right of way plans, becoming familiar with project and making note of the following:
  - a. Any changes or omissions in topography or new development, which will need to be shown on Plans
  - b. All signs, which are located within the project limits; take pictures of each.
  - c. Any buildings or major structures located within an acquisition area.
  - d. Gas stations and other sites, which have underground storage tanks and potential hazardous waste, such as laundry mats, auto repair sites, landfills, junkyards, etc.
  - e. Security chain link and/or field fencing to be replaced by roadway contractor, including gates.
  - f. Parcels involving Relocation and possible consequential displacees.
  - g. Determine parcels, which need easements for building demolition (partially outside required right of way) and for removal of underground storage tanks & trade fixtures (i.e. billboards, signs, canopies, etc.).
14. Request in writing to the appropriate Project Manager that the project be staked and that all new topography and development that was identified from the field review be shown on plans along with creation of any fence easements for the replacement of security fencing specifying request by parcel number.

15. Obtain a copy of the Underground Storage Tank and Hazardous Waste Site Reports from the District Preconstruction Office for the reporting of any soil contamination. If contamination is found, meet with Review Appraiser to determine if the contamination is severe enough to warrant the expense of a Phase 2 clean-up report. Obtain “Notification Data for Underground Storage Tank” from Georgia Environmental Protection Division (404) 362-2687 to bring for discussion with reviewer at the project review inspection.
  - a. In order to properly to comply, “EPD Form 7530”, Notification for Underground Storage Tanks with instruction sheets, can be located in forms (District Resources) for your use in completing the form.
  - b. Acquisition Managers will be responsible for properly completing the forms on any parcels with underground storage tanks to be acquired by the Department. This form will be used to alert the Property Management Section that underground storage tanks are part of the acquisition. The Property Management Section is to be provided a copy of the form with present owners’ names, immediately after the property has been inventoried and the ownership of the tanks ascertained on the Property Inventory Forms. This action will allow the Property Management Section to better inventory and control the removal of underground storage tanks.
  - c. Once the parcel is closed, the “EPD Form 7530” that indicates that the Department now owns the storage tanks should be forwarded to this office along with the copies of the deed, closing statement and copy of check. The form will be provided to the property management section for use in removing the tanks and to transfer tank ownership to the demolition contractor.
  - d. Please read the instruction sheet carefully to make the proper determination of the type of underground storage tanks that require “EPD Form 7530”.
16. Notify the General Office Local Government Coordinator immediately upon identifying any pending acquisition from a State or Federal Government Agency. NOTE: These properties should be identified at the Preliminary Field Plan Review (PFPR). The form entitled “Preliminary Field Plan Review Checklist” which is found in District Resources should be used when attending a PFPR.
17. If a Local Government or Agency owns a parcel; after funding authorization and appraisal of parcel, contact the Land Division, make offer and request a donation.
18. If the State or Federal Government owns a parcel, after Funding Authorization, contact the General Office Local Government Coordinator to process donation request. Reference [23 CFR 710.601](#).

**C. Meet with the Project Attorney**

1. Briefly describe concept of the project. Please reference [49 CFR 24.102\(e\)\(2\)](#), & [\(3\)](#); [49 CFR 24.103\(a\)\(2\)](#) for references to title requirements.
2. Set due dates for Ownership Verification Reports and Preliminary Title Reports and identify, if necessary, which parcels have priority over others. Monitor progress of completion based upon the established due dates. The Ownership Verification Reports are completed on all parcels prior to the attorney completing the Preliminary Title Reports.

**D. Ownership Verification Form**

In an effort to get ownership and property line information corrected on the preliminary plans at the earliest possible date, an Ownership Verification (see forms folder) be completed on each parcel by the assigned attorney prior to beginning work on the Preliminary Title Reports.

The Ownership Verification will be provided and explained to the attorney during the initial assignment meeting with the Acquisition Manager or Consultant. It should be emphasized that a complete copy of the recorded deed and/or survey must be attached to the Ownership Verification. The Acquisition Manager or Consultant will schedule the completion dates for both the Ownership Verifications and Preliminary Title Reports. Title reports will not begin until Owner Verifications have been completed.

Upon receipt of an Ownership Verification, the Acquisition Manager/Consultant will review each verification which the attorney reports as 'not adequately identified' and determine if the discrepancy is justified to warrant a plan correction. If a plan correction is required, a copy of the verification with attachments will be forwarded to the appropriate design office to make the necessary plan change. A copy of all verifications for parcels to be appraised will be forwarded to the assigned appraiser, followed with any plan changes resulting from the review.

Upon completion of all Ownership Verifications, the attorney may then begin preliminary title work, which when completed will be furnished and distributed per current procedures.

This procedure will commence with any new assignments or current assignments, which have not had legal assistance assigned.

It is essential that the Ownership Verification be completed and reviewed as quickly as possible in order to identify and correct the plans of any found discrepancies in a timely manner.

1. The General Office Acquisition Unit may waive Ownership Verification Reports on certain projects with a written request from the Acquisition Manager and approval.
2. Furnish a full set of Right of Way plans to attorney.
3. Ensure that attorney does not have a conflict of interest with any parcel or owner regarding legal assistance. If conflicts exist, contact the General Office Acquisition Unit as soon as possible.
4. Discuss any questions regarding closing procedures or assistance from your team.
5. Send a follow up letter confirming the meeting and establishing the due date(s) for the parcels.
6. Make copies of the Ownership Verification Reports and furnish to assigned parcel appraiser(s).
7. Enter the owners name in TPro by appropriate parcel number.
8. At the Acquisition Manager's discretion, team members may be required to review all titles to the right of way plans to ensure plans accuracy.

**E. Signs**

1. Review plans and make sure that all signs within the required right of way are shown on plans. Reference [49 CFR 24.105](#) for improvements.
2. Take picture of each sign that is within the project limits and Assign a number to each; "3 S-1", "3 S-2", etc. Prepare a "PM-1" (Property Management and Relocation initial inspection form) for each sign. This form identifies a physical address and should include the picture of the sign.
3. Meet and discuss the signs with the Outdoor Advertising Coordinator to identify permitted signs and illegal signs and to obtain sign ownership, addresses and copy of ground lease which may be on file.
4. Maintain a project Sign Inventory Report listing and describing with station and offsets all signs located on the project, and send a copy of this report to the Property Management Office prior to the preparation of the appraisal contracts. This report is updated and resubmitted to the Property Management Office at time of Project Inspection, Final Field Plan Review (FFPR) and upon certification of project.

5. Prepare sign contract for valuation quote from Sign Company. This procedure is to be coordinated through Procurement Services.
6. Meet and discuss with Sign Company the sign contract and valuation procedures. Furnish a plat showing the location.
7. Submit sign contract quote through the appropriate personnel in Procurement Services.
8. Upon approval, mail a Notice of Assignment to Sign Company emphasizing due dates and monitor schedule.

**F. Owner Information Meeting**

If a project is small in parcel count and consists of minor acquisition, it may not be practical to conduct this meeting. A request in writing or e-mail to the General Office Acquisition Unit may be submitted for a waiver of this meeting. Reference [49 CFR 24.102\(b\)](#).

1. Secure a location and schedule a date and time for the meeting.
2. Research owner's names and addresses from the tax digest and tax plats.
3. Prepare and mail notification letter with an enclosed questionnaire to each owner (this letter may be found in the District Resources Folder). The completed questionnaire is collected at the meeting; however, if owner cannot attend the meeting, the completed questionnaire should be mailed back to the Department. If a waiver of the Property Owner's meeting is granted a modified notification letter should be sent in lieu of invitation to meeting.
4. Make appropriate copies of Right of Way plans to be used during meeting.
5. Make copy of each questionnaire and furnish to appraiser, original remains at office.

**G. Appraisal**

Reference [49 CFR 24.103](#) and [49 CFR 24.104](#).

1. Determine the feasibility of using staff to Negotiate from Cost Estimate, Data Book or Appraisal.
2. Once cost estimate is complete request project field review with Review Appraiser.



3. Bring 1/2-size set of plans and notes regarding any specific parcels or appraisal concerns, which will need to be discussed and reviewed.
4. Determine appraisal assignments (staff, fee, or both). Determine the appropriate format of each assignment and if Negotiation for Services (NFS) will be utilized.
5. Conclude what specialty reports or evaluations may be required, such as signs, trade fixtures, environmental, timber cruise, cost to cure (Septic, Parking, Landscape, etc.)
6. Discuss the need of back up appraisals with the Review Appraiser.
7. During the project review, the Review Appraiser will be making notes of the valuation needs of each parcel on the form entitled 'Project Inspection Checklist'.
8. Prepare appraisal and specialty contracts as discussed with Review Appraiser.

#### **H. Pre-Bid Meeting with Appraisers**

1. Contact the Appraisal Review Manager for input to coordinate Scoping Meeting through Procurement Services.
2. The requirements and procedures regarding this meeting are addressed in Chapter 4, Appraisal Policies, and Procedures in this manual.
3. Open sealed bids. This activity is coordinated through Procurement.
  1. Upon approval of contract, the Right of Way Acquisition Manager will send a 'Notice of Assignment Letter' to the appraiser listing each parcel with the appropriate due dates.
    - a. Input in TPro the assigned appraiser and appraisal due dates for each assigned parcel. Also, enter any parcels to be 'Negotiated for Services', or 'negotiated from cost estimate'. Input 'Y' in the "NFS" field and show negotiator's initials.
    - b. Schedule a scoping meeting with the appraiser and furnish a copy of fully approved appraisal contract, copies of Right of Way and Construction plans, specialty reports, preliminary title reports, underground storage tank reports, questionnaires from Owner Information Meeting, and any other document that may be necessary.
    - c. Inform appraiser the names of the specialty contractors and schedule a meeting of all parties, if necessary, to discuss individual problem parcels, Review Appraiser should also attend this meeting.

- d. Monitor progress of assignments emphasizing due dates.
- e. As completed appraisals are furnished, send one copy of the appraisal to the Review Appraiser.
- f. If relocation is involved on the parcel, submit a separate copy of the appraisal to the Relocation Office.
- g. When data book is furnished (three copies required), send one copy to the Review Appraiser, send one copy to Relocation (if required), and keep one copy in your office.

## **I. Relocation/Property Management**

[Reference 49 CFR Subpart C](#) – General Relocation Requirements; [49 CFR 24.201 through 24.505](#).

- 1. Identify the Relocation Specialist assigned to the project.
- 2. Review the Relocation portion of the Conceptual Stage Study furnished from the Relocation office. Make note of the number of displacees, owner residential, tenant residential, commercial, etc., addresses also shown in the study.
- 3. From previous project field review, identify parcels that involve relocation, including any consequential displacees.
- 4. Acquisition Manager should enter all relocation information in TPro at the beginning of a project. Keep information updated in TPro throughout life of project. For a parcel that involves the acquisition of an occupied or recently vacated commercial or residential building, which generated income rental, the owner also is to be shown as possibly being eligible to receive benefits for reestablishment cost. Also, list all consequential displacees making note to that effect in the remarks field.
- 5. Mobile Homes are treated as real estate to be purchased in lieu of cost of moving. Reference [49 CFR 24 Subpart F – Mobile Homes](#).
- 6. Input in computer a 'Y' in the Relocation field for parcels requiring relocation and a 'Y' in the Property Management field for parcels involving major structures.
- 7. If a parcel involves only the relocation of yard storage or is a Non-Resident Owner (NRO), discuss with Relocation Specialist the alternative process of the \$500 or less moving cost procedure.

8. Make assignments for conducting residential and business interviews.
9. If a specialty contractor is employed to furnish the moving cost and/or trade fixtures for a business, inform the displacee the contractor's name and that they will be in contact with them.
10. If an Underground Storage Tank is involved, obtain a copy of the permit entitled 'Notification Data for Underground Storage Tank' (EPD Form 7530) either from the owner or from the Georgia Environmental Protection Division (404) 362-2687 and send it to General Office Property Management Office and the appraiser. You will need the Facility ID #, if not available, the name and address is sufficient.

## **5.9 Preparation for Negotiation**

Prior to negotiation with a property owner, the negotiator should be fully familiar with all pertinent data related to the subject parcel(s) and acquisition. The following procedures represent an outline of the minimum preparation necessary before meeting with an owner. Property negotiations may consist of three separate formats:

- **Negotiation based upon an approved appraisal**
- **Negotiation for Services (NFS) based upon an approved value range**
- **Negotiation based upon an approved project cost estimate**

### **A. Assignment**

Receive from Acquisition Manager the released appraisal(s) and Review Appraiser Report "R/W 532" or if Negotiation for Services, receive assignment to proceed. If the estimation of value for each parcel on a project is \$10,000 or less, negotiation from the approved project cost estimate may be approved and thus receive assignment to proceed. Reference [49 CFR 24.102\(c\)\(2\)](#). If a staff member appraised the released parcel; the individual who appraised the parcel may also be assigned to negotiate it, if the fair market value does not exceed \$10,000.00.

### **B. Create File**

Create parcel file, writing the Project number, P.I. number, and Parcel number at the top of folder. Place within the file all documents pertaining to the parcel, such as Ownership Verification form, Preliminary Title Report, and if appraised, the Appraisal(s) and Review Appraiser Report "R/W 532". If negotiating from a cost estimate, include a copy of the cover sheet of the detailed cost estimate and the page

that references the parcel to be negotiated. After preparation, place in the file copies of the Negotiation Package with highlighted Right of Way and construction plan sheets involving the subject parcel.

### **C. Project Plans and Design**

1. Review and understand the overall concept and purpose of the project such as an intersection improvement, bridge replacement, roadway widening, passing lane addition, etc. design features whether it's 4 lane raised concrete median, ditch section, curb and gutter section, beginning and ending of project, median break locations, limited access, noise walls, etc. Be aware of project timetables such as baseline/scheduled let date for construction and length of construction.
2. Be familiar with the proposed design and construction features involving the parcel itself, such as the purpose of the required right of way and/or easements, road elevations, cut section, fill section, steepness and elevation of slopes, water drainage, construction limits, edge of pavement, percentage of driveway profile, property access, median, sediment basin, security fence replacement, etc.
3. Check all construction cross-sections, driveway profiles, construction limits, etc. with right of way plans to ensure they match-up correctly.
4. Make two copies of all plan sheets involving the parcel including Right of Way parcel sheets, construction, cross-sections, driveway profiles, etc. (1st copy for owner; 2nd copy for file) Mark and color the plans for easy understanding Stamp 'Preliminary' on all plan sheets.

### **D. Use of Temporary Easements**

Due to continuing problems with the use of Temporary Easements on projects, Temporary Easements are NOT to be used in the future during initial project design, except for driveways, fences and detours.

- In rural areas, acquisition that typically would be an easement should be designated as Required Right of Way and negotiated to Permanent or Temporary Easements, if necessary.
- In Urban areas, easements should be designated as Permanent and negotiated to Temporary Easements, if necessary.
- The approval of the State Right of Way Acquisition Manager, the appropriate Design Office and the District Utility Office is REQUIRED to convert areas to Temporary Easements.

### **E. Property Ownership**

Read and study both the Ownership Verification form and the Preliminary Title Report of the parcel, becoming familiar with the ownership makeup and any exceptions to the title such as liens, judgments, leases, mineral rights, etc.

#### **F. Preliminary Title Report to District Utility**

Acquisition Managers and Consultants performing Pre-acquisition activities shall obtain or reproduce a copy of each preliminary title report for each parcel and send said copy of report directly to the District Utility Engineer's Office responsible for your project area, as soon as possible.

The purpose of this activity is to assist all District Utility Engineer Offices with utility identifications for those recorded utility easements.

It is important to instruct the assigned project attorney to thoroughly identify all recorded utility easements (public and / or private) in their preliminary title.

1. If the date of the Preliminary Title Report is older than six (6) months, request in writing that the attorney update the report.
2. Check the name of the property owner with the name shown on the Right of Way plans, if different, request name change on plans.
3. Compare the Right of Way plans to the legal description of deed, specifically checking the land lot and district, roadway frontage and the total size of property, if different, request correction of the plans. (Note: there may have been sell off tracts from the property since the original deed, which may have changed the roadway frontage and property size from the legal description.)

#### **G. Property Valuation**

1. Appraisal Release: Read and review appraisal(s), specialty reports, and Review Appraiser Report "R/W 532" and thoroughly understand the basis of value and effects to the remainder property.
  - a. Confirm that the areas shown on plans agree with the areas as shown on the Review Appraiser Report "R/W 532" (Check math on "R/W 532").
  - b. Make sure that you have all specialty reports if applicable such as cost to cure, signs, trade fixtures, etc.
  - c. Read any appropriate analysis in project data book such as proximity study, neighborhood analysis, etc.

2. Negotiation For Services (using Data Book): Using sound appraisal judgment, determine Estimate of Value, not to exceed \$25,000 from the Review Appraiser's pre-approved range of value; consisting of land and improvements. (Damages cannot be part of this value estimation).
3. Negotiation From Cost Estimate: Use the value established in the cost estimate for each individual parcel, not to exceed \$10,000 from the market data of the approved project cost estimate consisting of land and improvements. (Damages cannot be part of this value estimation).
4. Field review subject parcel and sales/rentals becoming familiar with each.
  - a. Anticipate what questions or concerns the owner may have, such as proximity of roadway or construction, tree or landscaping loss, steep slopes and driveway, drainage, parking loss, affected septic system, property access, median breaks and be prepared to discuss these concerns with the owner.
  - b. Be prepared to walk the site with the owner in order to show on the ground the area(s) of acquisition.
5. Be sure all additional information is received from the offices of Property Management and Relocation.
  - a. All Relocation Packages will be prepared and provided by the Relocation Office. If you have questions, ask Relocation Specialist.
  - b. Review Appraiser Report "R/W 532" to identify any items of realty that may be retained by owner; if applicable, obtain retention value.
  - c. Buildings and major structures: (Retention Value and Bond will be determined and provided from Property Management Office.)

#### **H. Negotiation Package Preparation and Owner Contact**

1. Contact the owner and schedule the appointment. The appointment is to be made as soon as possible, typically no longer than ten business days from date of assignment. The appointment with the owner is to take place prior to any offers presented to other property interests.
  - a. First contacts should be made in person unless circumstances require offer to be mailed, such as an out of state owner. The entire package with plans is sent by certified mail accompanied with an introduction transmittal letter. Be sure to confirm with the owner the correct mailing address.
  - b. Verify after several days to ensure offer package was received.

2. Prepare appropriate Negotiation Package. The standard owner negotiation package includes the following documents ([Reference 49 CFR 24.102\(d\), and \(e\)](#)):
  - a. Offer Letter (Waiver Letter used for Negotiation for Services)
  - b. Statement of Estimated Values
  - c. Letter of Availability of Incidental Payments
  - d. Right of Way Option with attached plats highlighting proposed acquisition
  - e. Brochure entitled 'What Happens When Your Property is Needed for a Transportation Facility'
  - f. Receipt for Brochure
  - g. Acknowledgement of Plan Receipt
  - h. Scalable ½ sized sheet of all applicable plans (ie: right of way plans, cross-sections, driveway profiles, etc.)
3. Variations in the Offer Letter may be necessary if the parcel involves an Uneconomic remnant, Relocation remainder, Leased fee/leasehold interests, or Life Estate/Remainder-man interests.
4. Staple Offer Letter to 'Statement of Estimated Values' (Does not apply to Negotiation for Service Package)
5. The owner is to be given a copy of the drawing supporting the cost to cure. It is acceptable to provide owner with the final line item.
6. Sign and date all forms (date shown should be the same date of the scheduled appointment)
7. Place all copies in file.
8. Be sure to include retention value (and bond, if required), in Statement of Estimated Values and Option.

#### **I. Tenant and Other Parties Receiving Compensation**

When a tenant or other interest has a tabulated leasehold, life estate, or similar divided interest in the fee simple value of the property, the property owner must first give written approval for the negotiator to negotiate directly with this party. If the approval is not given, the negotiator will negotiate with the owner for the

combined fee and tenant interest and the owner will be responsible for negotiation with the other party. This does not mean however that the other party should not be contacted and advised of the impending acquisition and that the owner has elected to negotiate his interest.

- Any compensation for improvements or trade fixtures, which are in the sole ownership of the tenant, will be negotiated directly with the tenant.
- Any relocation offers involving the tenant must be made directly to the tenant.

**J. Negotiation Packages – Types of Offer Letters (See Next Page)**



**Figure 5.1**  
**Negotiation Packages\* – Offer Letters**

<b><u>Standard Owner</u></b> <ul style="list-style-type: none"> <li>• Offer Letter</li> <li>• Statement of Est. Value</li> <li>• Receipt &amp; Brochure</li> <li>• Incidental Payment</li> <li>• Option/Plat</li> <li>• Owner's Acknowledgement</li> <li>• Receipt of Plans**</li> </ul>	<b><u>(2) Uneconomic Remnant Owner</u></b> <p>Offer Letter Statement Est. Receipt/Brochure Incidental Pmt Option/Plat Acknowledgement</p>	<b><u>(3) Under \$10,000 Owner (Cost Est.)</u></b> <p>Offer Letter Statement Est. Receipt/Brochure Incidental Pmt Option/Plat Acknowledgement</p> <p>(Waiver letter not required)</p>	<b><u>(4) Leased Fee Owner</u></b> <p>Offer Letter Statement Est. Receipt/Brochure Incidental Pmt Option/Plat - Total Option/Plat – L. Fee Acknowledgement</p>
<b><u>(5) NFS Owner(Data Book) Under \$25,000</u></b> <p>NFS Offer Letter Waiver/Donation Letter Statement Est. Receipt/Brochure Incidental Pmt Option/Plat Acknowledgement</p>	<b><u>(6) D/W Only Owner</u></b> <p>Negotiation Letter Driveway Easement Receipt/Brochure Acknowledgement</p>	<b><u>(7) Leasehold Tenant</u></b> <p>Offer Letter Statement Est. Receipt/Brochure Incidental Pmt Option/Plat–L. Hold Acknowledgement</p>	<b><u>(8) Imp/T. Fixture Tenant</u></b> <p>Offer Letter Statement Est. Receipt/Brochure Incidental Pmt Option/Plat Acknowledgement</p>
<b><u>(9) Trade Fixture Sign Only</u></b> <p>Offer Letter Sign Release Receipt/Brochure Acknowledgement</p>	<b><u>(10) Advance Acquisition Hardship</u></b> <p>Hardship Offer Letter Statement Est. Receipt/Brochure Incidental Pmt Option/Plat Acknowledgement</p>	<b><u>(11) Advance Acquisition Protective Buy</u></b> <p>Same as #1, Standard Owner</p>	<b><u>(12) Condominium Units</u></b> <p>Condo Offer Letter A Condo Offer Letter B Statement Est. Receipt/Brochure Incidental Pmt Option/Plat Acknowledgement</p>
<b><u>(13) Townhouse Units</u></b> <p>Townhse Offer Letter A Townhse Offer Letter B Statement Est. Receipt/Brochure Incidental Pmt Option/Plat Acknowledgement</p>	<b><u>(14) State Employees or Public Officials</u></b> <p>Offer Letter Statement Est. Receipt/Brochure Incidental Pmt Option/Plat Acknowledgement</p>	<b><u>Acknowledgement of Access Rights</u></b> <p>To be included in all offer packages where limit of access rights are proposed.</p>	<b><u>Condemnation Request</u></b> <p>Condemnation Request Form Condemnation Service Addresses Preliminary Title Report Appraiser Affidavit (properly executed) Any special instruction</p>

\*All files are to maintain “negotiation logs”; Separate file logs for Relocation and for each interest (i.e., signs, tenants)

- The Negotiation Package involving a Relocation Remainder is the same package used for an Uneconomic Remnant.
- The Negotiation Packages involving Life Estate/Remainder-man interests are the same packages used for Leased Fee/Leasehold interests

\*\*Owners Acknowledgement of Receipt of Plans to be included as part of ALL offer packages

## **5.10 Negotiation and Acquisition**

The negotiator should always keep in mind that owner contacts have two main purposes.

1. To fully inform the owner of the pending acquisition and the acquisition process.
2. To make every reasonable effort to acquire the necessary property interest at the established fair market value.

### **A. Presentation to Owner**

Explain and Discuss with the Owner the Following Topics.

#### **1. Explain the Project Overview**

- a. Concept: What will be constructed?
  - Intersection improvement
  - Bridge replacement
  - Roadway widening
  - Passing lane
  - Other
- b. Purpose: Why will it be constructed?
  - Existing and projected traffic congestion
  - Nonfunctional existing design
  - High accident location-safety
  - Condition and age of existing bridge
  - Stacking problem
  - Driving visibility
  - Turning problem

- Other
- c. Timetable: When will it be constructed?
  - Baseline/Scheduled Let Date
  - Projected time construction will begin
  - Projected time of construction
- d. Design Features: How will it be constructed?
  - Number of lanes
  - Sidewalk
  - Bike lane
  - Limits of project
  - Median and median break locations
  - Curb and gutter for drainage
  - Slopes and ditch for drainage
  - Signalization (traffic lights)
  - Limited access
  - Turn lanes
  - New location
  - Vertical curves
  - Horizontal curves
  - Other

## 2. Explain Parcel Overview

Review with the owner the project plan sheets:

- a. What is needed to be acquired from the property and why is it needed?  
Use visual aids, such as: the right of way plan sheets, cross-sections, driveway profiles, and if necessary, other construction plan sheets regarding staging, profiles, typical sections, drainage, utilities, striping, etc.
- b. Required Right of Way (area, depth and length)
- c. Easements (area, depth and length)
  - Permanent: For construction and maintenance of (state the purpose)
  - Temporary: For construction of (state the purpose)
- d. Purpose of Easements
  - Slope
  - Drainage
  - Driveway
  - Detour
  - Fence
  - Sediment Basin
  - Utility
  - Other
- e. Access Rights
- f. Other
- g. Explain the difference between Required Right of Way and an Easement

### **3. Explain Design Features and Effect on Parcel**

- a. Location of required right of way and easements
- b. Construction Limits – Cut “C” or Fill “F”
- c. Edge of roadway pavement (sidewalk and bike lane)
- d. Access due to median
- e. Driveway location (width and grade)
- f. Access drive if vacant remainder is no longer accessible after construction
- g. Roadway and drainage
  - Curb and gutter
  - Slope and ditch
  - Sediment basin
  - Drainage structure
  - Rip rap
  - Cross pipes
  - Security fence
  - Roadway elevation
  - Cut and fill slopes
  - Steepness in grade of slopes 2:1, 4:1, etc.
  - Guardrail
  - Proximity to remainder improvements
  - What happens to mailbox

- Other
- h. Items, which may be, located within the parcel's acquisition areas:
- Sign
  - Fence
  - Septic line
  - Landscaping
  - Trees
  - Well
  - Yard light
  - Sprinkler
  - Buildings/Structures
  - Parking spaces
  - Curb
  - Pavement
  - Other
- i. Offer owner the opportunity to review the acquisition area(s) on the ground and to walk the property. If staked, explain to owner how the stakes correspond to the right of way plan sheets.

#### **4. Review Preliminary Title Report**

- a. Review the Preliminary Title Report with the owner.
- b. Confirm that they still are the owners of the property.

- c. Confirm the stated title exceptions for accuracy and ask if there are any other exceptions, which may exist that, are not listed (Either by being missed by our attorney, documents not recorded or by recent transactions after the title report date).
- d. Obtain addresses and/or telephone numbers of title exceptions in order for our Closing Attorney to contact them for necessary release of interest prior to closing.
- e. Obtain account numbers of any security deeds or loans on the property, also to be used by our Closing Attorney.
- f. Confirm that the property is not under foreclosure.
- g. Confirm that there is not a bankruptcy involved, if so, obtain name address and/or telephone number of the court appointed Bankruptcy Trustee (Note: Property cannot be acquired either by deed or by condemnation until Trustee releases the required acquisition from the bankruptcy proceedings).
- h. If an owner is deceased, ask if a Will has been probated and in what county. Attempt to obtain names of the heirs at law and their relationship and address. (If the title report does not show an estate, notify our attorney after returning to office).
- i. Ask for the names of any tenants on the property.
- j. Ask if there is anything else, regarding the property title, which was not discussed.

## **5. Present Offer Package**

### **a. Brochure**

Explain that the Brochure is an overview of the procedures that we follow in acquiring property as well as addresses the rights of the property owner. It also outlines the Relocation Assistance Program.

### **b. Receipt for Brochure**

It is a requirement that owners be provided a Brochure. Ask if they would sign the Receipt acknowledging that they have received the Brochure.

### **c. Letter of Incidental Payments**

- d. Explain what items at closing will be paid directly by the Department (reference [49 CFR 24.106](#)), such as:
  - Closing cost
  - Recording fee
  - Pre-Payment penalties; pro-Rata share of any pre-paid property taxes
- e. Explain what items will be reimbursed to the owner by the Department.
- f. Property tax for that portion of property actually acquired.
- g. Reset front property pins if there are existing pins.
- h. Reasonable Attorney fees for withdrawing money from court on title condemnations if no appeal is filed by another party.
- i. Appraisal Overview
  - Explain in general the appraisal process and procedures used by the appraiser in arriving at the value, such as the market approach and the use of comparable sales, etc.
  - Explain that all appraisals are reviewed and approved by a Certified Reviewer Appraiser.
- j. 'Offer Letter' with attached 'Statement of Estimated Values'
  - Explain that this is the Department's offer letter and review with the owner the Statement of Estimated Values, addressing any value breakdown, division in property interest, (normally in a lease fee/leasehold situation) and retention value and bond, if any.
  - If a cost to cure is involved, explain and review with the owner any drawings supporting cost to cure.
  - Address all of the owners concerns; if unsure of an answer, inform the owner that you will get the answer and get back in touch with them (Be Sure That You Do This As Soon As Possible)
- k. Option for Right of Way with attached Plat



- Furnish the owner two copies, one for the owner to keep, and one to be signed and given back to you when the owner is ready to sign.
- Review the Option and explain the various sections of the form, how it applies to them, addressing when applicable the retention of improvements, economic rent, and uneconomic remnants.

l. Accepted Agreement or Settlement

- Owner should execute Option in order to begin the closing Process.
- Acquisition Manager or Consultant Coordinator approve the Option and furnish the owner with a copy of the approved Option.
- Make a second copy of the Option, blocking out the value, and place it in the Project Option Folder, which is later furnished to the Construction Project Engineer.

m. Document file and Negotiation Record

- Follow procedures outlined in 'Closing Procedures and Parcel File Closeout'

n. Counter offers

- Property owner should write in the counter offer amount, and initial. Once the option is approved, the approving authority should also initial change. Owner's initials should match signatures.
- Any requested special conditions of settlement such as design revisions should be clearly stated in the area identified as 'Other Provisions' in the Option or as an attachment to the Option.
- Owner signs and dates the Option
- Counter offers and/or special conditions must be reviewed for acceptance by the Acquisition Manager or Consultant Coordinator
- All Design related agreements must be approved by the Design Manager
- Follow procedures in 'Administrative Settlements' in this Chapter and Chapter Six of this Manual.

## **B. Negotiation with State Public Officials or Department Employees**

Any transaction between a full-time or part-time public official and a state agency involving the sale of real property to the state or a state agency does not constitute a conflict of interest if the sale is through eminent domain ([O.C.G.A. § 45-10-25 \(a\) \[1\]](#)) or if the sale price is less than \$250 ([O.C.G.A. §§ 45-10-22 \[b\] \[2\], 45-10-24 \[b\] \[2\]](#)).

Prior to filing a condemnation action on a piece of property on a federal-aid project, the Department of Transportation is required by federal regulation to attempt to negotiate a purchase. While such a negotiated purchase is under the threat of condemnation, there has been no interpretation of whether the words “through eminent domain,” as used in [O.C.G.A. § 45-10-25 \(1\) \(1\)](#), mean a sale under threat of condemnation or require that a condemnation action be filed. Because the conflict of interest portion of the Code ([O.C.G.A. Title 45, Sec. 2, Part 1](#)) was passed to prevent public office being “used for private gain other than the remuneration provided by law” ([O.C.G.A. § 45-10-21 \[a\]](#); see, ([O.C.G.A. § 45-10-28](#)), the latter meaning would be the accepted one.

It is recommended that public officials or employees decline the offer, which the Department of Transportation is, required to make prior to condemnation and require that the land be condemned. This would clearly fall within the purview of the exception. Of course, if official or employee is satisfied with the amount paid into court as estimated just and adequate compensation at the time the condemnation is filed, they would not be required to file an appeal; however it is recommended.

## **C. Final Negotiation Contact and Administrative Appeals**

1. If the Acquisition Manager is unable to negotiate a settlement, the owner is advised of the opportunity to request an Administrative Appeal prior to the filing of the petition. The owner’s appeal request is directed to and conducted by a representative from the General Office Acquisition Unit. Reference Chapter Six of this Manual.
2. The Acquisition Manager should make every effort to meet with the owner in person for either the Administrative Review or the Final Contact as a last attempt to reach a settlement in lieu of condemnation.
3. If the Acquisition Manager is unable to conclude a settlement under the format of an Administrative Review, the manager will mail a letter informing the owner of the Department’s intent to proceed with condemnation.
4. If the Acquisition Manager is unable to conclude a settlement with a tenant interest under the format of an Administrative Review, the manager will mail a letter informing the tenant of the Department’s intent to proceed with condemnation. NOTE: If the tenant has a leasehold interest, and the owner has

elected to negotiate on their behalf, then the tenant will not receive a 10-day letter.

#### **D. Request for Petition Preparation – Information for Condemnation Petitions**

In order for the condemnation petitions to be processed in a timely manner, the information outlined below must be furnished. The preparation staff does not have the time to read every negotiation record or each appraisal to determine what information is needed. It is up to the Right of Way Specialist negotiating the parcel to obtain this information at the time of the contact.

The following information must be included in the file when requesting condemnations:

1. Names and address of ALL OWNERS, TENANTS or BUSINESS OWNERS D/B/A, LIEN HOLDERS, SECURITY DEED HOLDERS (if a security deed has been paid off but has not been cancelled of record, the security deed holder must be named), SIGN OWNERS, if the sign is to be condemned, HEIRS OF ESTATES, BENEFICIARIES OF TRUST, and anyone who has filed a Lien or “FIFA” against the owner/owners of the parcel. Addresses should be HOME addresses, not a P.O. Box number (for OUT OF STATE, a P.O. Box is sufficient) or, in the case of a person “doing business as”, the address of the business is sufficient.
2. Registered Agent for Corporations and Insurance Companies. The name and address for service must be the one the Secretary of State’s Office has on file. If the company is not on file, then you must find out who the President or an Executive officer of the Company is, DO NOT list just an address for a company. Someone must be named to receive service. In order to get some of the information you may need to contact the Secretary of State’s Office or visit their web site <http://www.sos.ga.gov/corporations/>.
3. Signs should be shown on the plans if they are to be condemned.

The three items listed herein still seem to be the major items omitted from Condemnation requests.

[O.C.G.A 9-11-4](#) (Commencement of Action and Service), deals with the personal service of petitions. It is suggested that each acquisition person review this information so they may read for themselves how Georgia Code Annotated requires service upon condemnees.

#### **E. Closing Procedures and Parcel File Closeout**

1. Owner(s) will be given the attorney's name and notified that the attorney will contact them to schedule a closing date.
2. If staff is conducting the closing, the owner should be informed of that representative. That representative will contact them to schedule a closing date.
3. Title Exceptions must be cleared by Quit Claim Deed (or other form of release) in order for the Department to receive clear title before a closing can be scheduled. The standard Closing Package consists of the following documents:
  - a. Right of Way Deed, Easement Conveyance, or Conveyance of Access Rights
  - b. Right of Way Remnant Deed (used only when an uneconomic remnant or Relocation Remainder is being acquired), see section referencing 'Uneconomic Remnants and Relocation Remainders'
  - c. Settlement and Disbursement Statement
  - d. Owner's Affidavit
  - e. IRS Reporting Form (used only if the Gross Proceeds are \$600 or more)
  - f. Acknowledgement of Access Rights (used only if access rights are acquired)
  - g. Acknowledgement of Access Rights-Access Control

The purchase of access rights must be explained to each property owner in terms of how acquisition affects their remaining property. Prior to closing, the property owner must sign and "Acknowledgement of Access Control" form to verify their understanding of our acquisition. Acquisition managers must insure that this acknowledgement form is obtained and included in the completed parcel acquisition file.

  - h. Real Estate Transfer Tax Declaration – P.T. 61 ( state "Exempt" in Section E, Block 1 regarding value)
  - i. Quit Claim Deed if applicable (provide only for staff closings/attorney's create their own)
4. Partial Take Closings as an expedited method to expeditious closings. Should any expedited manner in which to close parcels be sought, the advice of the Right of Way Acquisition Manager or the Assistant Right of Way Administrator should be sought.

## **F.. Staff Closing Procedures**

In order to increase productivity and speed up the closing process, acquisition managers are authorized to close parcels valued under \$100,000. This authority will be strictly monitored and reviewed by the General Office staff.

The General Office staff will visit each District and conduct training as to the procedures required for team closings. This training will be required for each team member in order for that person to act as the Department's closing official.

The following is an outline of the procedures that must be followed:

1. Title Reports: Team members are not authorized to research titles. The attorney assigned to the project will provide all Preliminary Title Reports at the beginning of the project. The attorney will also provide the Final Title Report after the parcel is closed. Once again, NO team member is authorized to prepare Preliminary Title Report or a Final Title Report. It is the Title Attorney's responsibility to compare the deed description on each parcel with the right of way plans for accuracy. The team member should also review the description of each parcel assigned for negotiations for accuracy. If errors are discovered, the plans should be corrected as soon as possible.
2. Closing Package: The acquisition manager and the team member assigned to monitor the project should meet with the attorney and determine the documents that he will provide to finalize the closings and those documents the team will provide. A determination should be made regarding the responsible party to secure any releases necessary. The following documents should be provided in order to properly complete the closings:
  - a. Right of Way Deed or easement documents with colored plats and descriptions.
    - Have the owners place their initials on each plat.
    - Any access rights acquired will be described in the body of the description attached to the appropriate document. The access right description will reference the linear feet acquired from station to station. The access rights acquired should be colored red. This is necessary in order to more accurately determine the access rights acquired.
    - Documents should be executed exactly as shown on the Title Report by each owner. Any documents executed by corporate officials should have the signature of two corporate officials and the corporate seal affixed. The signatures of each person signing any document must be witnessed and properly notarized. The witness and notary must be present at the time the document is signed. This is a legal requirement.
  - b. Closing Statement

- c. Pro-rate taxes on total taxes.
- d. Property Transfer Tax Declaration Form (P.T. 61)
- e. Owners Affidavit

Access Control Document (found in the District Resources Folder), if any access rights are to be acquired.

- f. Any releases necessary to properly and completely clear the title prior to closing. Any title exceptions recommended by the acquisition manager or closing attorney must be approved by the General Office in writing prior to closing.
- g. I.R.S. Reporting Form
  - Report total amount paid to owners including damage payments and cost-to-cure funds.

This form is not necessary for corporations.

- The following procedures are to be followed to insure that the 1099-Sforms for real estate transactions are issued correctly:
  - 1) When an attorney acts as the closing official, the attorney is legally responsible for issuing the 1099-S [title 26 CFR section 1.6045-4(e)]. Therefore, it will not be necessary to forward the IRS Reporting Form to the Office of General Accounting. The Department will not issue these 1099-S's.
  - 2) When an acquisition team member serves as the closing official and the check is made payable directly to the owner(s), the check request **must** have an IRS Reporting Form attached.

Corporations are exempt from the reporting requirement.  
Transactions for less than \$600.00 are exempt from the reporting requirement.

The 1099-S forms will be issued to each payee listed on the IRS Reporting Form for the total amount of the transaction. This is in accordance with the IRS rules and regulations. It then becomes the payee's responsibility to prove the amount he/she actually received.

Prior to closing, the attorney assigned should check the title to date and review the documents. Upon closing, deeds and easements should be recorded as quickly as possible by the team or the attorney. The release documents should also be recorded. The release documents should be delivered to the attorney to include in the final Title Certificate package.

This procedure should greatly decrease the time required to close parcels. This procedure must be completed with the greatest sense of urgency. This is a time saving procedure and must be treated as such. The accuracy and completeness of the process is critical to receive the rights in the property acquired.

This procedure will be monitored by the General Office and made a part of the District Process Review.

A tenant or other interest cannot be closed prior to an owner closing if the interest is a leasehold, life estate, or similar divided interest in the fee simple value of the parcel. A tenant or other interest can be closed by Quit Claim Deed prior to an owner closing if the interest only consists of tenant improvements and or trade fixtures and does not involve a tabulated leasehold, life estate, or similar divided interest in the fee simple value of the parcel.

After closing, the executed deed and/or other conveyance of property rights are recorded.

- h. "Notice to Vacate". If relocation is involved a "Notice to Vacate" must be issued and should be issued at time of closing. The Department cannot require an Owner to vacate his property any sooner than 90 days following the date of first contact for negotiations; or, any sooner than 60 days following either the date of deed or the filing of a condemnation petition.
- i. Final Title Certificate on all closed parcels, including staff closings, will be prepared and furnished by the project attorney.

#### **G. Title (Friendly) Condemnations**

- 1. The condemnation of a parcel after an "amicable settlement" may become necessary to obtain clear title.
- 2. A written notice is to be mailed to the owner to inform them of the necessary condemnation action to clear title. A copy is to be sent to the General Office Acquisition Unit.
- 3. The amount paid into court with the petition is the approved Fair Market Value with the affidavit signed by the appraiser.

#### **H. Condemnation Overview**

- 1. Condemnation is used only after all reasonable efforts to reach a settlement have failed.

2. The Department acquires the vast majority of the property by deed. Property acquired through condemnation typically represents a low percentage of a project.
3. Condemnation Petitions are filed in the County Superior Court and a check for Fair Market Value is deposited with the clerk's office. Title to the required right of way and/or any required property rights are legally transferred to the Department on the date the petition is filed. The Department receives possession of the parcel either (30) thirty or sixty (60) days from the filing date. (As indicated in petition)

## **I. Condemnation Petition Filing Procedures**

Please utilize the most current transmittal letter when sending petitions to Department attorneys for filing. You may find this letter in the District Resources Forms file. This letter advises the attorneys to file the petition in the appropriate courthouse records. In addition to filing the petition in the Civil Records, it instructs them to record the Order and Judgment (portion of the petition) in the Deed Books.

*Opinion of Michael J. Bowers, State Attorney General, 1985:*

*"In the course of further research I have found a statute which bears directly, albeit apparently unfavorably to DOT, on this question, O.C.G.A. § 9-12-86 (b) provides that "no judgment, decree, or order . . . of any superior court . . . shall in any way affect . . . title to real property until the judgment, decree [or] order . . . is recorded in the office of the clerk of the superior court of the county in which the real property is located and is entered in the indices to the applicable records in the office of the clerk." The applicable records are defined to include deed books, les pendens dockets, federal tax lien dockets, general execution dockets and attachment dockets.*

*Because the order and judgment in your declaration of taking packet states that the property is condemned, a certified copy of this order should be filed and recorded in one of the five applicable records. To do this, however, it will probably be necessary to include a description of the property condemned as a part of the order. My recommendation is that the most applicable record in this situation would be the deed books.*

1. After the filing, the owner and other named parties in the styling will be served with the condemnation petition by the Sheriff.
2. If relocation is involved, a 'Notice to Vacate' must also be mailed to displacees after filing the petition. This establishes the sixty (60) day period that the Owner will have to relocate following the filing date of the petition.



3. After the petition has been filed, there should be no further contact between the Owner(s) or their representative and the District Negotiator or the Acquisition Manager. Owners should be asked to have their attorney contact the attorney assigned to the project or the attorney who has filed the petition for condemnation. Any condemned parcel will be assigned to a Condemnation Coordinator. These Coordinators are assigned to the General Office and are supervised by the Right of Way Acquisition Manager (please reference the Organizational Chart in Chapter Two of this Manual).
4. Condemnation Coordinators are assigned to cover all condemnation parcels statewide. Their function is to assist the project attorney in any condemnation matter and coordinate with them so that all required material is forwarded to them. The Coordinators will send any request for required information or information that the attorney asks for, to the Acquisition Manager or to the Negotiator of the parcel, if needed. As well, they frequently find attendance at legal proceedings is required, such as depositions, Special Masters Hearings, meetings with the Project Attorneys and other Department personnel, and condemnation trials.

#### Condemnation Valuation Expert Witness Procurement Process

Upon receipt of Notice of Appeal, a litigation team should be assembled that includes the Special Assistant Attorney General, Condemnation Coordinator, Review Appraiser/Review Appraiser Auditor, Appraiser of record, and any Specialty Report providers who supplied a report of significance.

1. Conduct a discussion regarding the level of skill and knowledge of the original appraiser and/or specialty service provider and the sufficiency of the report.
2. Make a determination whether appraiser and/or other service provider possess skills adequate to render service in case.
3. SAAG, Condemnation Coordinator, and Review Appraiser should discuss the Scope of Work to ensure the team is in agreement with Scope of Work and it is consistent with initial Scope.
4. If the determination is **yes** for that specific service provider, SAAG will request updated report(s). Request should include a Scope of Work Agreement (see Forms) and should include an *estimate* for anticipated number of hours for meetings, depositions, trial preparation and testimony, etc., as determined by the SAAG.
5. If the determination is **no** and a different service provider is desired, the SAAG should send a recommendation letter to the Right of Way Administrator outlining the following:

- Reason(s) why a different or additional appraiser or other specialty service provider is necessary; and
  - List three (3) recommendations for the service provider desired in specific area of expertise.
- 6. The Right of Way Administrator will prepare a letter of concurrence or provide additional information that could include alternative suggestions. If necessary Right of Way Administrator will contact the SAAG for further discussions.
- 7. Upon receipt of concurrence or receipt of other possible suggestions from the Right of Way Administrator, SAAG will send request for fee quote for services to the three (3) alternate service providers.
- 8. Upon receipt of quotes SAAG will submit to Condemnation Coordinator along with their recommendation of which parties to engage for services.
- 9. After receipt of quotes, Condemnation Coordinator will provide to Right of Way Administrator for authorization for submission to Procurement. If necessary Right of Way Administrator will contact the SAAG for further discussions. The recommended quote and PFR (requisition form) will be submitted by the Condemnation Coordinator to the Office of Procurement for issuance of a Purchase Order (PO). Consultant Condemnation Coordinators will prepare and submit PFR to the State Acquisition Manager that supervises the Court Coordinator's unit.
- 10. Service Provider will bill for payment of services upon completion and approval by GDOT. The hourly services will then be billed on incremental invoices as incurred. Service providers must be aware that financial commitment is capped and once purchase order has been exhausted a request for new PO must be submitted by Condemnation Coordinator prior to services being authorized.

#### **J. Procedures for Negotiation for Services (NFS)**

Parcels acquired with State and/or Federal funds with an estimated fair market value of \$25,000 or less and that do not involve damages may be acquired without a written appraisal provided that the owner elects to negotiate for services and waives the right of an appraisal. This method of negotiation is used as a time saver in property acquisition since a written appraisal is not required. The 'Estimate of Appraisal Calculation' form is used to determine the value to be offered based upon an established Value Range previously approved by the Review Appraiser. This method of negotiation is only used for non-complicated parcels with values estimated less than \$25,000 and that involve no damages.

1. Present the offer based upon the amount concluded on the Estimate of Appraisal Calculation' form.

2. Proceed with the negotiation process, presenting the negotiation package with the exception of an 'Offer Letter', which is not used in this procedure (see 'Negotiation Packages' at Figure 5.1)
3. The owner may stop negotiation at any time and request that an offer be made based upon a written appraisal.
  - a. If a settlement is reached, a copy of the approved Option should be furnished to the owner. Follow the procedures outlined in 'Closing Procedures and Parcel File Closeout'.
  - b. If a settlement is not reached within a certain period, the Department will proceed in having the parcel appraised by a Certified Appraiser.

**K. Uneconomic Remnants and Relocation Remainders**

The following procedure is ONLY used when the project Review Appraiser designates in the released Review Appraiser Report "R/W 532" that one or more of the parcel's remainders will become either uneconomic remnants or a Relocation Remainder. In general, an Uneconomic Remnant is created when the separate highest and best use of the designated remainder(s) after the acquisition of the parent parcel becomes so limited that the remainder has only nominal value. A Relocation Remainder is created when the acquisition involves the main residence, displaces the owner occupant who is qualified for a Replacement Housing Payment, and the remaining land is 5 acres or less and capable of being developed. (See the Relocation Assistance Chapter 11 in the Manual).

- a. The Right of Way Option must reflect if the uneconomic remnant or Relocation Remainder is to be sold or not sold as part of the settlement.
- b. An 'R' parcel is created to be shown and described on the right of way plans as a separate parcel; it is not to be combined with the parent parcel.
- c. Both deeds will be signed by the owner at closing. (The purpose of a separate 'R' deed is to identify the tract as surplus land not needed for the construction project and to be inventoried for possible future use or resale by the Property Management office).
- d. The Department does not include the uneconomic remnant or Relocation Remainder in the condemnation; thus, title will remain with the owner. Occasional exception is a settlement that includes the sale of the remnant or remainder is unable to close due to title problems. In this case: 1. the owner can request in writing to the Department that the remnant or remainder be included in the condemnation action with the assurance that no appeal greater than the

settlement amount will be filed; AND, 2. The Department's upper Right of Way Management must approve the exception.

**L. Procedures for Acquisition of Right of way from Cemeteries or Burial Grounds and Relocation of Burials.**

In the past it has been Departmental policy for the Office of Right Of Way to handle all elements, legal and otherwise, pertaining to the acquisition of lands from cemeteries and burial grounds and were required, the disinterment and re-interment of individuals, for the sole purpose of providing additional right of way or permanent easements for the Department. State legislation, Official Code of Georgia Annotated ([OCGA 36-72](#)), "Abandoned Cemeteries and Burial Grounds," 1991, as amended, requires that additional information concerning cemeteries, and burial grounds be gathered and taken into consideration and that a permit be issued prior to land use conversion.

[OCGA 36-72](#) should not be inferred to supersede compliance with Section 106 of the National Historic Preservation Act ([NHPA](#)) of 1966, as amended, the Native American Graves and Repatriation Act, 1990, ([P.L. 101-601](#)); [OCGA 12-3-620](#), [OCGA 31-21-6](#), 1992; [OCAG 44-12-260](#), [OCGA 44-12-280](#), or [OCGA 44-12-300](#), 1993.

The Office of Environmental Services (OES) will gather the necessary information required to submit an application for the issuance of a permit by the superior court having jurisdiction except where otherwise noted below. The actual permit application and subsequent submission of the application will be completed by the Office of Right of Way. In the event right of way or permanent easement(s) is to be acquired by any other agency, authority, or political subdivision of the state, it shall be said entities responsibility to obtain such a permit. Office of Environmental Services will provide available project information to such entity as requested.

Applications for a Permit shall include, at a minimum, the following information supplied by Office of Environmental Services except where otherwise noted:

- a. Evidence of ownership of the land on which the cemetery or burial ground is located in the form of a legal opinion based upon a title search. The title search should also document all references to cemeteries or burial grounds including maps or other descriptive reference where abandoned family cemeteries or Native American burial grounds are not separately titled. The title search will be conducted by the Office of Right of Way. One copy of the results of the title search will be provided to Office of Environmental Services for use by the project archaeologist and genealogist.
- b. An archaeological Report of Investigation or Letter of Findings will be prepared by the Departmental Archeologist stating the number of graves believed to be present and their location.

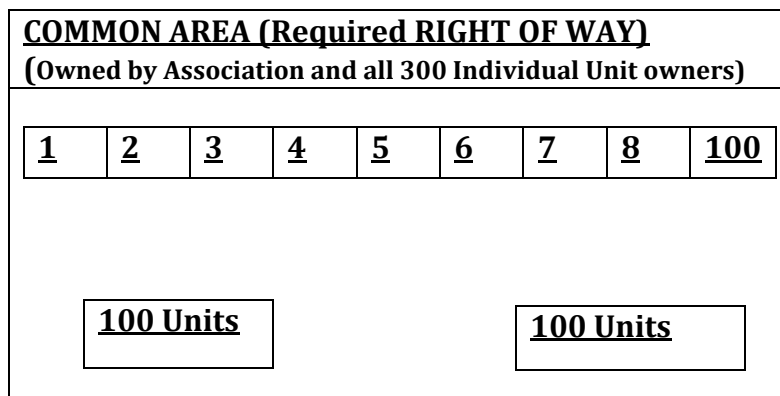
- c. A survey shall be prepared showing the location and legal boundaries of the cemetery or burial ground based on the title search. In the event there is no previously defined cemetery boundary, the Department archaeologist's report of Letter of Findings will include a boundary description based on the results of the archaeological survey. The property survey will be conducted by the District Office of Pre-Construction at the request of Office of Environmental Services.
- d. A plan shall be prepared by a qualified genealogist for identifying and notifying the descendants of those buried or believed to be buried in such cemetery. If those buried or believed to be buried are of aboriginal or American Indian decent, the genealogist will notify the Department archaeologist in order to coordinate notification of the Council on American Indian Concerns and other interested tribal groups and to assure timely compliance with additional state and federal legislation appertaining to Native American interments and associated burial objects. Office of Environmental Services will contract with a qualified genealogist; and,
- e. A proposal for mitigation or avoidance of the effects of the planned activity on the burial ground shall be prepared by Office of Environmental Services and shall specify the method of disinterment, the location and method of disposition of the remains, the approximate cost of the process, and the approximate number of graves affected. The Department archaeologist will coordinate with the Office of Construction and supervise the mitigation plan if it includes disinterment of human burials.

Additional procedures for the application of a permit will be conducted by the Office of Right Way and include the following:

- f. Implement the genealogist plan for identifying and locating descendants provided by Office of Environmental Services no later than the date the application is submitted to the superior court having jurisdiction;
- g. Ensure that all provisions of the permit are fulfilled;
- h. Coordinate all appeals of the permit and ensure that all necessary steps have been completed to rectify permit application deficiencies; and,
- i. Provided Office of Environmental Services with one copy of the permit for project files.

## M. Procedures for Making Offers on Townhomes and Condominium Units

### CONDOMINIUMS



**Figure 5.2**

#### 1. OFFER

Request meeting with President of Association & all unit owners to present & review offer for common area acquisition.

- a. Association and all individual owners (300) are contacted and provided with Letter "A" (posted in District Resources).

This letter states what the Total Value of the Common Area is (take area), and what damages, if any, to the remaining common area.

This letter also states what their pro rata share of the take is (Ex.: 1/300).

Advise that any potential impact to individual units will be addressed with individual unit owners separately.

- b. All individual owners who have potential damages, as a result of the acquisition, (Units 1-100) will receive letter "B" (posted in District Resources).

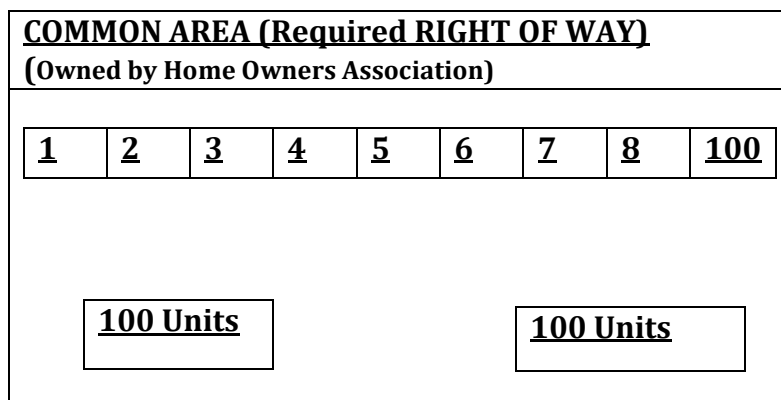
NOTE: ALL 300 unit owners and Association will have to sign QC or we will have to condemn.

NOTE: Advise the Board that they can act on behalf of all property owners if they obtain a proxy or assignment of the individual unit owner's interest. Advise that the Department's attorney will have to review proxy or assignment prior to dissemination to all owners to confirm that it meets all the legal requirements for closing,

## 2. CONDEMNATION

- a. File fair market value and consequential damages to Common Area only.
- b. No damages will be filed for individual condominium units. In order for condominium unit owners to get damages, they will have to file an Inverse Condemnation.

### **TOWN HOMES** (Reviewed and Approved by Anne Sapp)



**Figure 5.3**

## 3. OFFER

### REQUEST MEETING WITH PRESIDENT OF HOME OWNERS ASSOCIATION \*TO PRESENT & REVIEW OFFER FOR COMMON AREA ACQUISITION

- a. Offer Letter "A" is sent to Home Owners Association for common area.

\*If Town Home board advises that individual homeowners have an interest in the common area and are a real party in interest, seek a legal opinion from the Department's attorney before proceeding.

Advise that any impact to individual units will be addressed with individual unit owner separately.

- b. If there is potential damages to units (Units 1-100) as a result of the Department's acquisition, Provide Letter "B" (to impacted units only). Owners will not sign Quit Claim. They will sign "Release" and Settlement Statement.

Owners in the other 200 units (that have no damages resulting from the Department's acquisition) will not receive either letter from Georgia Department of Transportation.

#### 4. CONDEMNATION

- a. File fair market value and consequential damages to Common Area only.
- b. No damages to individual units will be filed into court. Owners of Town Homes will have to file Inverse Condemnation to receive damages.

#### **N. Administrative Settlements**

An Administrative Settlement is a settlement at an amount other than the tabulated Fair Market Value and/or any other change or alteration in the Option. If a negotiator finds merit in an owner's counter offer, he should receive the offer in writing. Such an offer is submitted to higher management for review and approval. Please reference Chapter Six of this Manual.

#### **O. Notice to Vacate**

The Acquisition Agent/Manager will send a copy of all "Notice to Vacate Letters" to Property Management when the Notice is mailed to the owners and tenants.

In the situation where there are not improvements being acquired except for underground storage tanks, the Acquisition Agent/Manager is responsible for preparing a Notice to Vacate letter requesting that the underground storage tanks be pumped and available for removal within 60 days from acquisition.

#### **P. Utility Disconnections**

Once the Department has possession of a vacant building, the Acquisition Agent/Manager will request that all service utilities be disconnected. The utility company needs to know specifically that the building is going to be demolished so that they can remove the meters wherever appropriate. Make sure that the electric company removes the meter and drops the line from the building to the street. The gas company should remove the meter and cap the line back to the street. The water company should remove the meter. It is the responsibility of the Negotiator to schedule both the disconnections and the appointment times for which this service will be accomplished. Negotiators are to meet the utility service personnel on site so as to prevent any confusion concerning which structure shall have service disconnected.

#### **Q. Project Certification/Transition Meeting**

##### 1. Project Certification



The Acquisition Manager is responsible for certifying the status of each assigned project including a statement of compliance to the General Office Acquisition Unit.

The purpose of the Certification process is to verify the timely and orderly acquisition of property rights necessary for Georgia Department of Transportation projects and to ensure that the acquisition of said property rights was in compliance with both federal and state law, and Department of Transportation policies and procedures.

The Certification of Right of Way projects is regulated by the official Code of Federal Regulations: [www.fhwa.dot.gov](http://www.fhwa.dot.gov); [reference 23 CFR 635.309](#) for Physical Construction Authorization.

- a. There must be a Right of Way Certification for all projects prior to baseline/scheduled LET date. In order to submit a Certification, the following conditions must be met: The plans must be approved; a statement is required from the State certifying that all individuals and families have been relocated to decent, safe and sanitary housing or the State has made available to the relocatees adequate replacement housing in accordance with Federal Highway Administration directives; all necessary right of way, including control of access rights when pertinent, have been acquired including legal and physical possession. Trial or appeal of cases may be pending in court but legal possession has been obtained. All occupants have vacated the lands and improvements and the State has physical possession and the right to remove, salvage or demolish these improvements and enter on all land.
- b. Certifications are due in the Right of Way office by the date listed on the Critical Events schedule. A monthly reminder memo is created and distributed with due dates for Certifications to Acquisition Managers, Consultant Coordinators and Local Government Coordinators. If this date cannot be met, the Funding and Certification office should be notified immediately. All Certifications must have the same format and be accompanied by a:
  - (1) Preconstruction Status Report,
  - (2) ROW Project Status Report (TPro)
  - (3) Relocation Advisory Service Certificate
  - (4) TPro Relocation Status Report
  - (5) Right of Way Improvement Status (PM-14)
  - (6) Trade Fixture and Sign Inventory Report (PM-15)
  - (7) Copies of all Right of Entries & Options w/Special Stipulations
  - (8) Copy of cover sheet highlighting outstanding parcels.
  - (9) Consultant Rating Forms

TPro should be updated to include all pertinent information including the property's deed book and page number (includes parcels closed via regular

acquisition as well as condemned parcels) after the official filing. If the deed book and page number is not available, then a comment with the status should be entered. A copy of the certification should be sent to the Funding and Certification office, Property Management and Relocation Offices. Once the Certifications are received, Federal and State Aid Certifications are created based on verified information from each of the offices. Property Management and Relocation Certifications are requested if needed. Property Management Certifications must include all improvements, as well as signs and trade fixtures within the right of way. All improvements must be removed prior to Letting or detailed on the Property Management Certification as clearing and grubbing items (Signs should be removed 31 days after closing and 61 days after closing when relocation is involved). Certifications are then thoroughly reviewed and signed by the State Right of Way Administrator and submitted to Engineering Services with distribution to the Federal Highway Administration, District Offices, Project Manager and the Acquisition Manager.

**\*\*NR** Certifications should include a verification form signed by the Project Manager to verify no Right of Way is required. The project cannot be certified without it.

## 2. Project Transition Meeting

After a project is let for construction, the Project Engineer will hold a Transition Meeting. The Acquisition Manager is required to attend this meeting, give the Project Option Folder to the Construction Project Engineer, and provide all pertinent details that will assist the Project Engineer in regards to the project. This folder is to contain a copy of all settlement Options, a list of all parcels condemned and the Acquisition Manager's business card. It will be helpful to inform the Construction Engineer of any concerns expressed by particular Owners during negotiations. If there are any Special Stipulations on the Options – or any agreements that were talked about – the Construction Engineer will need to know about all such matters. It is a common occurrence to receive calls from the Construction Engineer or his staff during the construction phase of a Right of Way project.

## R. The Negotiation Record

1. It is required that the negotiator maintain accurate, written legible records of all negotiation contacts ([reference 49 CFR 24.9](#)). A separate Negotiation Record should be maintained for each individual interest when an offer is made.

Records should include:

- a. The date and location of each contact
- b. Persons present at each contact

- c. Questions and/or concerns discussed and addressed
- d. Offers made and discussed
- e. Discussion of the presentation of all required forms for the offer
- f. Discussion that both the Brochure and the Receipt for Brochure were delivered and signed
- g. Discussion of the explanation that the owner was informed of all pertinent construction details about the project and what effect it would have on the roadway in general and the effects it would have on the Owner's property
- h. Discussion of all questions asked by Owner and the explanation given
- i. Discussion of all monetary matters discussed especially concerning any about the value of property referred to by owner
- j. Counter offers made (verbal or written)
- k. Any Special Stipulations or agreements that were discussed with the Owner
- l. Any other information pertinent to the negotiation of the parcel

The Negotiator is to keep in mind that the Negotiation Records need to be as complete, detailed, accurate, and as thorough as possible. Many people may read these records at a later date for any number of reasons. It is the intent of maintaining complete records to display and document what transpired during the negotiation phase of Right of Way. All personnel are to keep in mind that "if it is not documented – it was not talked about".

## **S. Relocation Responsibility**

It is the responsibility of the assigned negotiator to advise, explain, and assist all displaced persons, businesses, farm operations, and non-profit organizations with regard to relocation benefits in which they are eligible. For a more thorough and detailed explanation of Relocation, please reference Chapter 11 of this manual. Reference also [49 CFR 24, Subpart C](#); [49 CFR 24.201 through 24.505](#).

These benefits may be as follows:

- 1. Individuals and Families
  - a. Moving Payment

- b. Replacement Housing Payment, (owner)
  - c. Supplemental Rental Payment/Down Payment, (owner/tenant)
  - d. Incidental Payments
2. Businesses, Farm Operations, Nonprofit Organizations
- a. Moving Payment
  - b. Reestablishment Cost
  - c. Search Payment
  - d. In Lieu Payment
  - e. Incidental Payments

If only a moving payment is involved, which is estimated to be \$500 or less, an alternative procedure has been established to offer this amount without going through the Relocation process.

#### **T. Property Management Responsibility**

For a more thorough and detailed explanation of Property Management, please refer to Chapter 9 of this Manual. Refer also to [23 CFR 710.403](#).

The State Property Manager establishes a retention value and performance bond for all buildings and major structures located within the proposed area of acquisition. No performance bond is required for retained minor improvements.

At closing, the owner is given a 'Notice to Proceed'. All trade fixtures and improvements not removed within the time period agreed upon will be considered abandoned by the owner. These notices are stipulated in the Settlement and Disbursement Statement.

After verification that the site is satisfactorily cleared, an executed Right of Way Clearance Report (PM-7) and copy of the Closing Statement is submitted to the Property Management Office to request the bond reimbursement to the owner.

At the time possession is surrendered, the negotiator is responsible for conducting an onsite inspection of the premises to ensure that all buildings, improvements and fixtures which were not retained by the owner are still in place. Buildings are posted with notification of State ownership.

## **5.11 General Responsibilities of the General Office Acquisition Unit**

### **A. Project Assignment**

It is the responsibility of the General Office Acquisition Unit to ensure that Right of Way Project schedules are maintained and that Right of Way is acquired and certified to meet effectively the established project let date. This task is accomplished by making an orderly and timely assignment of the project and by monitoring acquisition activities on all assigned projects.

As Preliminary Right of Way plans are submitted for review and approval, the General Office Acquisition Unit requests project legal services from the Attorney General's Office, reviews current and projected Acquisition Team workloads and, with the recommendation of the District Pre-construction Engineer, makes project assignments accordingly. Consultant services may be employed for Pre-Acquisition, Acquisition, and/or Negotiation assignments, if deemed necessary

Project assignments will be made on a statewide basis and not by geographical work areas; therefore, a team may be assigned a project located beyond the limits of operations of the District to which it is stationed. As stated above, project assignments are made when the preliminary right of way plans are received for review and approval. At this time, all pre-negotiation activities take place by the assigned team from the preparation of the project cost estimate to the review and release of appraisals. No offer or negotiation will take place prior to the Authorization of Right of Way funds and the notification of approval by the General Office Acquisition Unit. After environmental or environmental reevaluation approval and approval of the Right of Way plans, the General Office Acquisition Unit requests Authorization of Right of Way funds.

### **B. Monitoring and Reporting of Right of Way Activities**

Once a project assignment is received and pre-negotiation activities commence, the acquiring Acquisition Manager is responsible for maintaining a current parcel-by-parcel status of all activities occurring on the project and for keeping the Right of Way Reporting System current in TPro. The Acquisition Manager is responsible for having the pertinent data updated on all assigned projects and entered into the system along with milestone dates entered into Artemis.

### **C. Right of Way Hammock in Artemis**

Shown below is a chart of Right of Way personnel responsibilities for the Right of Way Acquisition Hammock in Artemis. The Certification and Funding Office will update the right of way estimate authorization field (70200). This includes the date of project assignment and receipt of the cost estimate. The Office of Financial Management will update the right of way authorization field (70400).

The appraisal and review field (71000) will be updated by using the notice to proceed date given to begin appraisals on the project and the final appraisal release date to be updated by the District Project Acquisition Manager.

The right of way negotiation field (73000) will be updated by the District Project Acquisition Manager. The start of acquisitions will be determined by the first contact made with a property owner and the end of acquisition will be the date the project is certified by the district.

The first step will be to make sure you have access to Artemis and if you do not, contact the Solutions Center State Scheduling Engineer for assistance.

HAMMOCK	DESCR	START	RESP	FINISH	RESP
70200	R/W Est. Authorization	Project Assignment	Funding and Cert	Detailed Cost Estimate Recvd	Funding and Cert
70400	R/W Authorization	1625 submit	Office of Financial Management	Work Authorization	Office of Financial Management
71000	Appraisal & Review	1 <sup>st</sup> Notice to Proceed	Project Acquisition Manager	Final Appraisal Release Date (Last Parcel Released)	Project Acquisition Manager
73000	R/W Negotiations	1st contact	Project Acquisition Manager	District CERT date	Project Acquisition Manager

**Figure 5.4**

1. The following steps will assist in updating Artemis using TPro:
  - a. Open TPro
  - b. Select – Artemis Project View
  - c. On the Artemis Project View Menu screen choose – Maintain Activities
  - d. On the Select Current Project screen – Type in Project ID
  - e. Click OK
  - f. Select the activity number and then type in the Actual State Date and the Actual Finish Date
  - g. Close

In addition to the above, the Acquisition Manager may be called on to provide reports and studies as deemed necessary by management.

### **C. Transmittal and Routing of Files**

The General Office Acquisition Unit is responsible for properly logging in, routing and keeping track of all negotiation files transmitted to the General Office.

#### **D. Certification of Right of Way Acquired**

The General Office Acquisition Unit is responsible for the Right of Way Certification of all projects prior to the baseline/scheduled let date.

### **5.12 Advanced Acquisition (Two Types)**

The purchase of property, as an advanced acquisition, is governed by the Official Code of Georgia Annotated, [Title 32](#); the Uniform Relocation Assistance, and Real Property Acquisition Policies Act of 1970, as amended; and, by federal law through [23 CFR 710.503](#).

#### **A. Advanced Protective Buying**

The purpose of an Advanced Protective Buying is to protect the proposed roadway corridor of a programmed project against new development, thereby reducing future right of way, and project cost.

1. The following criteria must be satisfied in order to meet the requirements for a Protective Buying Acquisition:
  - a. A letter to the State Right of Way Administrator outlining the situation and circumstances, which form the basis of protective buying request
  - b. A site plan indicating proposed imminent development of the property and approved by the local approving authority (county or city).
  - c. And/or a building permit approved by the local approving authority (county or city).
2. The only exceptions that may be considered are those requests initiated by management or one of the Department's design offices.
3. In the event the environmental document has been approved for the project, the State Right of Way Administrator can review and approve the acquisition and it does not have to go to the Federal Highway Administration for their review and approval. If the environmental document is not current within six (6) months, it must be reevaluated and brought current within six (6) months at the time of approval and subsequent offer to purchase. Should the project environmental document not be approved, the request for a Protective Buying must be reviewed and approved by the Federal Highway Administration. An environmental document for the specific property must be cleared and within

six (6) months current at the time of approval and the subsequent offer to purchase.

4. Upon approval of the acquisition:
  - a. An Acquisition Manager will be assigned and the appraisal process can begin.
  - b. Legal assistance will be requested from the State Attorney General's Office.
  - c. The Department's intent to acquire will be advertised in the newspaper.
  - d. The Acquisition Manager will prepare a cost estimate and make a request for funding to the General Office.
  - e. Upon authorization of funding, the Acquisition Manager will be authorized to proceed with the offer.
  - f. Georgia Department of Transportation will exercise the authority to condemn if a settlement is not reached after an administrative review is conducted.

## **B. Advanced Hardship Acquisition**

The purpose of a Hardship Acquisition is to alleviate a hardship to the owner due to health, safety, or financial reasons.

1. The following criteria must be satisfied in order to meet the requirement for a Hardship Acquisition:
  - a. A letter to the State Right of Way Administrator outlining the situation and circumstances, which form the basis of the Hardship request
  - b. Written justification and documentation, which support the hardship acquisition in the context of health, safety, or financial reasons and sets forth a unique, undue hardship in comparison to others on the project.
  - c. Documentation that the property failed to sell when it was placed on the open market at fair market value, within a time period that is typical for properties not impacted by the project.
2. Upon receipt of adequate written justification and documentation, the approval and acquisition process follows items (a) through (f) (*Protective Buying*) above.
3. The owner will be allowed an administrative review to see if a settlement can be reached prior to the termination of negotiations. The State Right of Way Administrator reserves the right to waive the administrative review process.



4. In the event a negotiated settlement cannot be reached between the Department and the property owner, all negotiations will cease and the property will be acquired within the normal project schedule.

### **5.13 Property Donations**

Pursuant to federal regulations [24.102](#) and [24.108](#) of [49 CFR](#) and following discussions with the Federal Highway Administration, this is to advise that the Department's policy concerning property donations have been modified as addressed below.

- A. If federal or state funds will be used to acquire or reimburse the cost of right of way, the Department and Local Government Agencies may accept donations from a property owner prior to Right of Way Funding Authorization only if the donation is initiated by the property owner and not solicited by the agency. The solicitation of donations by an agency is considered the initiation of property negotiations, which cannot occur prior to Right of Way Funding Authorization. A property donation cannot pre-determine the project's alignment.
- B. If federal or state funds will be used to acquire or reimburse the cost of right of way, the Department and Local Governmental Agencies may solicit and accept donations from a property owner after Right of Way Funding Authorization only if a preliminary project right of way cost estimate is completed and documented in the project file. A written appraisal is not required prior to the solicitation of property donations.
- C. If 100% local funds will be used to acquire right of way with no federal or state reimbursement but Preliminary Engineering and/or Construction costs will be reimbursed by federal and/or state funds, the above conditions still apply. The solicitation of donations may be initiated following the approval of both the environmental document and the right of way plans.

For any of the above situations, the owner must be made aware that they are entitled to receive compensation for the property and must sign the Georgia Department of Transportation "Waiver Letter" waiving their right of compensation should they elect to donate and release the agency from this obligation. If the owner elects to donate but also requests an appraisal for tax purposes, the parcel is to be appraised and submitted for review.

Prior to accepting any donations, the parcel should be tested by the Office of Material & Research (OMR) for soil contamination or hazardous waste if there is evidence of underground storage tanks or other potential sources of contamination. Upon review of the completed contamination report and the level of any found contamination if any, the Design Project Manager will determine if the parcel will still be necessary for project construction (contaminated or not) or if the parcel can be eliminated with a design change.

If the Design Project Manager determines that the parcel will still be necessary, the donation to the Department may proceed.

## **5.14 Condemnation Preparation Policies and Procedures**

The purpose of this Section is to assure that condemnation actions, within the control of the Department of Transportation, proceed in a timely and orderly manner within the framework of applicable law and in coordination with the State Law Department of the Attorney General's Office.

The functions of this Section are to prepare proposed Declarations of Taking; to coordinate condemnation liaison with the State Law Department; and, to supply the Acquisition Unit with condemnation papers ready for filing.

This section is supervised by the Condemnation Supervisor who reports directly to the Right of Way Acquisition Support Manager. The staff of this Section reports directly to the Condemnation Supervisor.

The District Acquisition Manager or Consultant formally recommends all condemnation proceedings to the General Office. If condemnation is determined advisable, they are submitted to the Condemnation Preparation Section for action. Actual condemnation proceedings must be formally approved by the Commissioner of the Department of Transportation on the recommendation of the State Right of Way Administrator.

Where condemnations are instituted by another governmental agency, the Right of Way State Administrator recommends such condemnation proceedings except where they are necessary to clear title.

All direct condemnations by the Department are conducted by an Assistant Attorney General on the regular staff of the State Law Department or specially employed Assistant Attorney Generals who are contracted for and under the supervision of the State Law Department

After it is determined that negotiation appears unsuccessful, or that a parcel must be condemned to resolve title issues, the Acquisition Specialist shall submit his recommendation for condemnation to the General Office with the following information:

### **A. Condemnation Petition Structure**

1. A current title certificate made over the signature of the assigned title attorney which determines persons and businesses having an interest in subject property. Then determine who should be named and how they should be named:
  - a. An individual owner - name the owner as his name appears on the deed.

- b. Trust - name trustee and beneficiaries of trust.
- c. Estate in which owner died testate - name the Estate and Executor.
- d. Estate in which owner died intestate - name the Estate, Administrator and heirs.
- e. Estate in which owner died intestate but no Administrator has been appointed – name Estate and heirs.
- f. Sole proprietorship - name owner d/b/a then name of business.
- g. Corporation - name corporation as its name is registered with Secretary of State.
- h. General Partnership - list partnership name and all general partners of the firm.
- i. Limited Partnership - list partnership name and all general partners of the firm.
- j. Banks - list complete bank name. Current names of banks can be obtained from one of the following sources:
  - Department of Banking and Finance for state banks
  - Comptroller of Currency for federal banks
- k. Office of Thrift Supervision for savings and loans FDIC for federal bank
- l. An appraiser's affidavit signed by the appraiser
- m. Service addresses for all individuals with an interest in the property

Examples:

- Serve Individual condemnees where they reside.
- Serve the Corporations registered agent with the Secretary of State's office on all in-state corporations, <http://sos.georgia.gov/>
- Serve the Banks President at the address of bank.
- Serve General Partnership by serving each general partner where they reside.

- Serve Limited Partnership by serving registered agent with Secretary of State's office. If there is not registered agent, serve each general partner where he resides.
- Serve Trustees and Beneficiaries where they reside.
- Serve Administrators and Executors where they reside.
- For minors or incompetents without guardians, serve the Judge of the Probate Court in the county the condemnation is to be filed.

Provide a copy of the most current Review Appraiser Report "R/W 532".

The Condemnation Preparation Section takes the following actions in preparation of the Declaration of Taking:

Fill out pages 1, 5, 7, 9, 10, 12, 14, 15, 18A, 19 and 20A.

**B. "Styling the Case" Examples**

1. Right of Way Only

DEPARTMENT OF TRANSPORTATION

VS

\_\_\_\_\_acres of land; and all persons having an interest in subject property, individually.

2. Right of Way and Easement

DEPARTMENT OF TRANSPORTATION

VS

\_\_\_\_\_acres of land; and certain easement rights; and all persons having an interest in subject property, individually.

3. Easement Only

DEPARTMENT OF TRANSPORTATION

VS

Certain Easement Rights; and All Persons having an interest in Subject Property

4. Access Rights Only

DEPARTMENT OF TRANSPORTATION

VS

linear feet of Access Rights; and Persons having an interest in Subject Property individually.

5. Right of Way and Access Rights

DEPARTMENT OF TRANSPORTATION

VS

\_\_\_\_\_acres of land; and certain access rights; and all persons having an interest in Subject Property individually.

6. Easement Rights and Access Rights

DEPARTMENT OF TRANSPORTATION

VS

Certain Easement Rights; and Certain Access Rights; and all persons having an interest in Subject Property individually.

Paragraphs 1, 2, 3, 6 and Page 4 of the petition must be completed to make the forms applicable.

Paragraph 1 - A Brief Outline of the petition; if you have a Non-Limited Access Project strike the words Limited Access Highway. The first reference to the project should be listed as Georgia Highway Project.

Paragraph 2 – Relates to easements; if you have right of way and easement, strike the word “not”.

Paragraph 3 - Relates to Access Rights; if access rights are to be acquired, strike the word “not”.

Paragraph 6 - List all condemnees by name and address.

Paragraph 7 - If subject parcel is any part within city limits, list the name of the city. (Also shown on page 17) if not, X out "the city of \_\_\_\_" and "county, and city taxes" and add "and county taxes".

7. Page 4

One original to be signed by the Attorney handling the case. The remaining copies are to be conformed copies.

8. Fair Market Value of Estimated Just Compensation.

This figure is to be inserted in the appropriate blank on Pages 6, 13, 14 and 20.

9. Page 7

A brief description of the project is inserted in the appropriate space on this page.

**C. Legal Description Structure**

Pages 9 and 20-A, legal description guidelines.

1. Pull plans and make half size copy of sheet(s) where parcel(s) is/are located.
2. Study half size sheet and locate the following:
  - North Arrow
  - Centerline (Survey/ Construction) - If more than one centerline is used find note depicting from which centerline Station/Offsets are taken
  - Land Lot Numbers, Land District Numbers, G.M.D. Numbers (where applicable)
  - Identification of Mainline/Baseline
  - Identify easements (if applicable)
  - All points on parcel and easement(s).
3. Write Description as follows:

Begin at the point of intersection of the property line between the lands of the condemnee(s) and the lands now or formerly owned by \_\_\_\_\_ with the \_\_\_\_\_ existing right of way line of \_\_\_\_\_, said point being \_\_\_\_\_feet

- left/right of station \_\_\_\_\_ on the \_\_\_\_\_ centerline of Georgia Highway Project \_\_\_\_\_; running thence \_\_\_\_ etc.
4. If on new location, described as follows:
- Begin at a point on the property line between the lands of the condemnee(s) and the lands now or formerly owned by \_\_\_\_\_, said point being \_\_\_\_\_feet (left/right) of station \_\_\_\_ on the \_\_\_\_\_centerline of Georgia Highway Project \_\_\_\_\_; running thence \_\_\_\_ etc.
5. If the existing right of way and property lines are going in a general direction, combine distance if more than one distance is used. No bearings or radii are used on existing right of way lines or property lines.
6. On required right of way lines, use bearings/distances and/or arc distances/radius. The only time a distance is combined on required right of way lines is when bearings and/or radii are the same.
7. When writing description of curve, use thence direction distance feet along the arc of a curve to the right/left (said curve having a radius of \_\_\_\_\_ feet and a chord distance of \_\_\_\_ feet on a bearing of \_\_\_\_ ) to a point \_\_\_\_ feet right/left of and opposite station \_\_\_\_ on said \_\_\_\_\_ centerline.
8. When the line being described (either existing right of way line of required right of way line) intersects with a property line, describe point and use the following: Said point also being on the property line between the lands of the condemnee(s) and the lands now or formerly owned by \_\_\_\_; thence direction along said latter property line, a distance of \_\_\_\_ feet to a point. If this latter point is intersecting with existing right of way, use following (said point also being on the \_\_\_\_\_existing right of way line of \_\_\_\_.
9. After describing the end of parcel, use "back to the Point of Beginning (POB).
10. After describing entire parcel of required right of way, use this last statement (Said described land being the required right of way and is shown colored yellow on the attached plat (s) marked Annex 1-A).
11. Write easement description as follows:
- If more than one of the same type easement to be described, use the following statement: (Also to be acquired by condemnation are no. of easements, type of easements (temporary or permanent) easements for the construction and maintenance of slopes being described as follows:
  - If easement abuts a property line, described as previously mentioned.

- If easement does not abut a property line, begin by describing point.
- On easements, no distances are described. After first point is described, run thence direction along a straight line or a curved line parallel to said centerline to a point. Then describe point, continue in this manner until the return to the Point of Beginning (POB).
- Examples of statements to be used after describing easements: If more than one of the same type easements, word statement in the plural.

**D. Examples of Statements to be Used after Describing Easements**

1. Temporary Slope Easement

Said described land being a temporary easement for the construction of slopes and is shown colored green on the attached plat(s) marked Annex 1-A.

2. Permanent Slope Easement

Said described land being a permanent easement for the construction and maintenance of a slope and is shown colored green on the attached plat(s) marked Annex 1-A.

3. Driveway Easement

Said described land being a temporary easement for the construction of a driveway and is shown colored orange on the attached plat(s) marked Annex 1-A.

4. Permanent Drainage Easement

Said described land being a permanent easement for the construction and maintenance of a drainage structure and is shown colored blue on the attached plat(s) marked Annex 1-A.

Description of building(s), when being removed or cut off. Use following:

Also condemned in these proceedings is any title estate or interest in the entire building, as well as the right to dismantle or remove the entire building labeled on the above referenced plat as \_\_\_\_\_ and located approximately opposite station \_\_\_\_ on the \_\_\_\_ centerline of \_\_\_\_\_. Said building is located partially on the required right of way described above and partially on the remaining lands of the condemnee.



Add the appropriate paragraphs below description so as to acquire the required title, estate, or interest in the subject property. This part is very important. The entire proceeding is dependent on this, as it is the only place specific title and rights required are set out. Below are examples for various types of rights to be acquired.

- a. For all Limited Access Projects except Parcels to be Total Takes.

The title, estate or interest in the above described lands, required by condemnor now taken by condemnor for public use as right of way for a LIMITED ACCESS HIGHWAY as defined under the Official Code of Georgia Annotated sections [32-6-110 thru 32-6-119](#) is as follows: Fee simple title to all the above described lands as shown colored yellow on the attached plat marked Annex 1-A and such access rights as may be required between the condemnees remaining real property and existing roads, streets or highways, intersecting or adjacent to the LIMITED ACCESS HIGHWAY, such access rights and lands being specifically delineated on Department of Transportation plats dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; Last Revised: Sheet No. \_\_\_\_ on \_\_\_\_\_ and attached hereto as Annex 1-A.

- b. For All Non-Limited Access Projects and All Total Takes.

The title, estate, or interest in the above described lands, required by condemnor and now taken by condemnor for public use is as follows: Fee simple title to the above described lands all as shown colored yellow on the plat dated the \_\_ day of \_\_, 20\_\_\_\_; Last Revised: Sheet No. \_\_on \_\_\_\_ and attached hereto

## **E. Example of Clauses Used for Ending Easement Language**

### **1. Temporary Slope Easement**

A temporary easement is condemned for the right to construct a slope to connect the newly constructed road and right of way to the condemnees' remaining lands. Said easement will expire on \_\_\_\_\_ and is shown colored green on the above-mentioned plat. Upon completion of the project, the condemnee shall have the right to use the slope easement area in accordance with applicable zoning restrictions, and the condemnor will cease maintenance of the slope easement area.

### **2. Temporary Driveway Easement**

A temporary easement is condemned for the right to construct a driveway to connect the newly constructed road and right of way to the condemnees

remaining lands for driveway purposes. Said easement will expire on and is shown colored orange on the above-mentioned plat. Upon completion of the project, the driveway will remain in place for use by the condemnees.

3. Temporary Fence Easement

A temporary easement is condemned for the right to construct a fence. Said easement will expire on \_\_\_ and is shown colored green on the above-mentioned plat. Upon completion of the project, the condemnee shall have the right to use the easement area in accordance with the applicable zoning restrictions, and the condemnor will cease maintenance of the easement area.

4. Permanent Slope Easement

A permanent easement is condemned for the right to construct and maintain a slope to connect the newly constructed road and right of way to the condemnees remaining lands. Said easement is shown colored green on the above-mentioned plat marked Annex 1-A.

5. Permanent Drainage Easement

A permanent easement is condemned for the right to construct and maintain a drainage structure. Said easement is shown colored blue on the above-mentioned plat marked Annex 1-A.

6. Temporary Easement for Removal of an Encroachment

A temporary easement for removal on an encroachment is condemned for the right to said easement is described as follows:

BEGINNING at a point ..... back to the point of BEGINNING. The easement will begin on the date possession is granted and continue until the \_\_\_\_\_ is removed or until \_\_\_\_\_, whichever comes first, at which time said easement will expire. Said \_\_\_\_\_ being shown on the attached plat marked Annex 1-A and is labeled “\_\_\_\_\_”. Said easement is shown colored \_\_\_\_\_ on the attached plat marked Annex 1-A.

**F. Plats/Color Code for Acquisition and Easements**

- Required Right Of Way - YELLOW
- Temporary Construction Easement And Permanent Easement For Construction And Maintenance Of Slopes –GREEN (If We Have Both On The Same Acquisition Then Differentiate The Color.)

- Temporary Driveway Easement - ORANGE
- Permanent Drainage Easement - BLUE
- Access Rights - RED

#### **G. Plats/Plans**

Plats must contain:

- Owner's name
- Area of required right of way
- Parcel remainder
- North arrow
- Centerline of any streets stations and offsets are taken from
- Centerline of project (when applicable)
- Project number
- Name of County
- Date of plans
- Sheet Number
- Date of revision
- Land Lot
- Land District
- Complete stations and offsets

#### **H. Summary**

1. Also, if anything in the legal description is taken from the plan sheet, be sure it is shown on the plat (s)
2. Page 13, Appraiser's Affidavit, will be prepared and Executed by the District. Submit three original copies.

3. If the Fair Market Value has been altered by the Review Appraiser, he will sign the Page 13.
4. Page 12 - List all land lots or Georgia Militia District in which total tract lies. X out "Land Lot No. (s)\_\_\_\_ of the \_\_\_\_Land District or \_\_\_\_ Georgia Militia District", whichever does not apply.
5. Page 17, Paragraph 5, List names of condemnees who are Georgia residents but who do not live in the county in which the condemnation is to be filed.

### **5.15 Quality Assurance Quality Control**

The acquisition phase of a Right of Way project interfaces with every Chapter in this manual. As such, there is much overlap with all other units involved with the entire Right of Way process. Mention is made here of the Code of Federal Regulations (CFR) requirements that identify how the Department shall remain in compliance during the acquisition phase (reference [23 CFR 710\(c\)\(4\)](#)). Mention is as well made here that in all activities undertaken during the Right of Way phase of a project, any policies, procedures, or regulations that we follow are designed to prevent fraud, waste and mismanagement (reference [49 CFR 24.4\(c\)](#)). This is not meant to be a complete and exhaustive list of compliance requirements for this concern. It is the responsibility of the Negotiator or the person that is acquiring property for the Department to research the applicable portions of Code of Federal Regulations and to understand how and why we are to remain compliant. Should any questions or concerns related to compliance surface and are not understood, then those questions are to be discussed with the successive management levels within the Department. Should upper management need direction or clarification over compliance issues, such will be addressed with the appropriate Federal Highway Administration contact person.

Negotiation records are to be complete, detailed and thorough and much emphasis is placed on records to be such (reference [23 CFR 710\(f\)](#)). Negotiation records are reviewed during the audit phase of the project. This audit may be performed at any time; as such, the complete, detailed and thorough records are to be maintained at all times. Detailed negotiation records and their importance are stressed during training classes conducted by this Office.

The Department is to monitor not only our activities, but also those activities of others, whether Local Sponsor or Consultant, to ensure compliance is followed (reference [23 CFR 710\(h\)](#)). Such activities as random and complete audits of files and any training classes conducted by this office help assure compliance issues are being met.

Acquisition personnel must give the Owner the chance to be present with the appraiser at the time the Owner's property is inspected to discuss any questions or concerns they may have, and also to walk the acquisition area during the appraisal process and again at the

time the offer is made to the Owner. This requirement is the same whether the property is appraised or if the Negotiation for Services method is to be followed (reference [49 CFR 24.102\(b\) and \(c\)](#)). These issues are covered at all training classes covering appraisals and negotiations; are policies of the Department; and, are mandated by law.

Following the completed review and release of the appraisal, further discussed in Chapter Four, the Negotiator is to prepare the offer package at the determined Fair Market Value and present this offer to the Owner(s) or their representative(s). All required and necessary forms are presented at the time the offer is made. All offers are required to be made by personal contact. Only after an unproductive, exhaustive search is made to contact the Owner may the offer be mailed with the approval of the supervisor. All information is presented and discussed with the Owner (reference [49 CFR 24.102 \(d\) through \(f\)](#)). These requirements are to be documented in the negotiation records; are discussed at training classes covering these issues, and, are to be highlights of any random or complete project file audit.

Owners are allowed a reasonable amount of time to review any negotiation information. The Department must consider any information from the Owner. The Department may not take any undue action to induce an Owner into an agreement (reference 49 CFR (f) and (h)). Again, these concerns are to be documented in the negotiation records, are discussed at training classes covering these issues, and, are to be highlights of any random or complete project file audit.

Should an acquisition agreement not be reached, the Department has established procedures for handling what in the past has been identified as an Administrative Settlement n/k/a the General Office Administrative Review. Chapter Six of this manual talks about this process (reference [49 CFR 24.102\(i\)](#)).

Payment to the Owner for either the established fair market value, the agreed upon settlement amount; or, the payment into the Clerk of Superior Court for the established fair market value is to occur at the time the deed is signed or at the time the condemnation petition is filed into Court. Such is standard procedure and policy (reference [49 CFR 24.102\(j\)](#)). This information is reviewed during an audit and may also be reviewed by personnel utilizing the electronic tracking currently in place at the Department.

The Department has a formal condemnation process and procedure, much of the information available in this Chapter, which see (reference [49 CFR 24.102\(l\)](#)). Condemnation information is not only available in the Department on a parcel-by-parcel basis, but certain documents are available to the public at the Clerk of Superior Court office as well.

Reviews, or audits, are an integral part of any acquisition process. Each Local Government project is subject to a complete file audit before any reimbursement is made to the Local Sponsor. File audits, whether for a Local project or a Georgia Department of Transportation project, are a routine procedure. This audit may be performed at random

during the acquisition phase, or, may be performed at the end of the project. Any person involved in any way during the acquisition of right of way must understand that audits may be performed at any time by the Department or by the Federal Highway Administration. This activity may be performed even if there are no federal funds being utilized during the Right of Way phase; the auditing of acquisition files may take place if there are federal funds being utilized in any phase of a project, whether it may be in the Pre-Engineering or in Construction phase. Audits are performed by the appropriate unit for the information being reviewed (i.e.: by the units of Relocation, Property Management; Appraisal and Review; Acquisition and Local Government).

Training is as well an integral part of the acquisition process. The Office of Right of Way conducts training for Local Sponsors, Georgia Department of Transportation Right of Way staff and Right of Way Consultants. Power point presentations are available for review and for training purposes. Training is at times conducted by one unit in particular (i.e.; the unit of Relocation for specialized purposes), or, by combined units conducting comprehensive overviews for an all day training session.

As mentioned earlier, the acquisition phase of Right of Way interfaces with every other Chapter in this Manual. It shall be the responsibility of the acquisition person to become familiar with Code of Federal Regulations and all requirements thereto. The Quality Assurance Quality Control information contained in many of these Chapters reflects that Code of Federal Regulations requirements are documented for not only our use and knowledge, but for the entire general public as well. Hyperlinks have been used throughout this Manual to directly take the reader to the particular Code of Federal Regulations information being talked about. With the use of computers, this same information is readily available to anyone doing a search. Using any widely available search engine (such as Google or Yahoo), simply start entering the information (i.e.: 49 CFR 24...) and the information will become readily available on the screen.